

RSA No.374 of 2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.374 of 2017 (O&M)

Date of decision:22.02.2019

Ram Kumar and others

... Appellants

Vs.

Khem Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Mittal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants have not been successful in defending the suit preferred by the respondent-plaintiffs for declaration and permanent injunction.

The plaintiffs alleged that their father, Ram Chander had purchased khasra no.2473 min(1-7) and 2475 (0-9) measuring 1 bigha 16 biswas i.e. $\frac{1}{4}$ share from one Bhoop Singh vide sale deed dated 26.06.1990. Kundan Singh son of Moola Singh was having $\frac{1}{4}$ th share in the aforementioned khasra numbers which vide sale deed dated 20.02.1990, was also sold and in this regard, mutation no.3156 was sanctioned on 5.3.1991. However, Bhoop Singh and Ram Chander had entered into mutual exchange and khasra number, which was sold Bhoop Singh, reverted back to him and in lieu thereof, Ram Chander was given khasra no.2506 measuring 16 biswas and mutation no.3154, in this regard, was sanctioned on 5.3.1991.

It is a matter of record that other half share i.e. $\frac{1}{4}$ share each which was held by two persons, was purchased by the plaintiffs, vide sale

deed dated 2.7.1990 and Court decree dated 3.11.1989.

It was explained that revenue record reflected the share of Ram Chander as $\frac{3}{4}$ and that of Bhoop Singh and Kundan as $\frac{1}{8}$ whereas aforementioned entry was incorrect. Ram Chander ought to have been shown as absolute owner of khasra no.2506.

The defendants opposed the suit and denied that Bhoop Singh had sold the property vide aforementioned sale deed and in alternative, stated that even if the sale deed was upheld, sale deed pertained to khasra no.2473. Even the exchange and mutation thereof were also emphatically denied and had also set up a plea of adverse possession.

Since the parties were at variance, the trial Court framed as many as 11 issues including the issue of Relief. The plaintiffs in support of the averments examined seven witnesses and brought on record Ex.P1 to Ex.P19, i.e., special power of attorney, sale deed, mutation, compromise, copies of judgments and decrees, khasra girdawari, jamabandis. On the other hand, defendants examined DW1-Ram Kumar who tendered into evidence by way of affidavit, Ex.DW1/A. In rebuttal, plaintiffs tendered into evidence Ex.P20 to Ex.P34.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellants submitted that in fact, sale deed was not with regard to khasra no.2473 but for 2479. In such circumstances, exchange was invalid. The entry in the revenue record was in accordance with the contents of the sale deed. The suit of the plaintiffs in the absence of any plea or having availed the remedy for rectification as per the provisions of Section 26 of Specific

Relief Act, was not maintainable.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Mittal as the sale deeds, mutations thereof and entry of exchange have been proved on record through revenue entry/documentary evidence which carries a presumption of truth as per the provisions of Section 44 of the Punjab Land Revenue Act. Once Ram Chander had purchased 1/4th share each from Sarti and Richhpal vis-a-vis khasra no.2506 i.e. 1 bigha, other 16 biswas was exchanged, Khasra no.2473 and 2475 were also of the same very land, thus, there was no short fall or increase as the same very area was exchanged, therefore, cause of action of the plaintiffs was justified to correct the entry reflecting Bhoop Singh to be owner qua 1/4th share.

It is also matter of record that Bhoop Singh had sold khasra nos.2473 and 2475 on 31.10.1992. The finding of fact and law cannot be said to be suffering from illegality and perversity. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 22, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No